

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)

Telephone Number Portability)

Petition for Forbearance of the)
Cellular Telecommunications)

Industry Association)

CC Docket No. 95-116

DA 98-111

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century")¹ hereby submits its reply comments supporting the above-referenced Petition for Forbearance ("Petition") filed by the Cellular Telecommunications Industry Association ("CTIA").² In the Petition, CTIA asks that the Commission forbear from enforcing local number portability ("LNP") requirements for CMRS providers. As detailed herein, the record supports CTIA's Petition. The majority of commenters, including PCS carriers, agree that forbearance is in the public interest and that the statutory criteria for forbearance are satisfied in this case. Further, the record shows that forbearance will advance the public interest by giving wireless carriers the flexibility they need to fully deploy their systems and respond to competitive demands. In light of the record, Century urges the Commission to

¹ Century is a provider of cellular and PCS services in several states in the mid-west, mid-south and Alaska.

² See Wireless Telecommunications Bureau Seeks Comment on CTIA Petition Requesting Forbearance from CMRS Number Portability Requirements, CC Docket No. 95-116, *Public Notice*, DA 98-111 (rel. Jan. 22, 1998).

grant CTIA's Petition and forbear from enforcing number portability requirements on CMRS providers.

I. SECTION 10 REQUIRES THAT THE COMMISSION FORBEAR FROM ENFORCING WIRELESS NUMBER PORTABILITY

In its Petition, CTIA argues that the FCC is required to forbear, at least at this time, from imposing local number portability on all CMRS providers.³ Pursuant to Section 10 of the Communications Act, the Commission is required to exercise its forbearance authority if three statutory elements are satisfied with respect to the particular regulation under review. The record shows that these criteria are clearly met in this case.

The first element requires that the Commission determine that enforcement is not necessary to prevent unjust, unreasonable, or discriminatory charges and practices.⁴ As different commenters observed, the Commission has already determined that existing statutes, Sections 201, 202 and 208, and the state of competition in the CMRS market work to ensure that no carrier will engage in unjust, unreasonable or discriminatory behavior.⁵ This conclusion is bolstered by the real-world evidence contained in the record. Indeed, it is well documented that pricing for wireless services is steadily dropping while service options are increasing. For

³ See 47 U.S.C.A. § 160 (1997) (stating that "the commission shall forbear from applying any regulation" if the section is satisfied).

⁴ 47 U.S.C.A. § 160(a)(1).

⁵ See, e.g., Bell Atlantic Mobile, Inc. ("BAM") Comments at 5-6; PrimeCo Personal Communications, L.P. ("PrimeCo") Comments at 6-8; see also *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 1411, 1478 (1994) (CMRS Second Report & Order) (noting that "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates").

example, one commenter noted that the average monthly bill for wireless customers has dropped 54% due to existing competition in the CMRS marketplace.⁶

Under the second element, enforcement of the regulation must not be necessary for consumer protection.⁷ Again, the Commission already has determined, when it decided to forbear from applying tariffing requirements to CMRS carriers, that competition and other statutory provisions provide consumers with the protection they need in the CMRS market.⁸ In essence, the Commission has already concluded that this element of the forbearance statute is satisfied. Thus, based on the competitive nature of the CMRS market, LNP is not needed or necessary to protect consumers.⁹

Finally, forbearance from applying the regulation must be “consistent with the public interest.”¹⁰ In the case of applying LNP to wireless carriers, the record is clear – LNP itself will not advance those public interest benefits it was promulgated to promote. Rather, the

⁶ Southwestern Bell Mobile Systems, Inc. & Pacific Bell Mobile Services (“SBMS/PBMS”) Comments at 5.

⁷ 47 U.S.C.A. § 160(a)(2).

⁸ BAM Comments at 6; PrimeCo Comments at 8-10; *see also CMRS Second Report & Order*, 9 FCC Rcd at 1479 (“Compliance with Sections 201, 202 and 208 is sufficient to protect consumers.”).

⁹ *See* PrimeCo Comments at 9 (“As the wireless marketplace has since become even more competitive, [local number portability] is clearly not ‘necessary’ to protect consumers.”); SBMS/PBMS Comments at 5-6 (“The intense competition in the wireless industry, from cellular carriers and PCS providers, clearly protects the consumer. ... Wireless number portability simply is not needed at this time to promote competition.”).

¹⁰ 47 U.S.C.A. § 160(a)(3).

implementation of LNP at this time is likely to inhibit the development of wireless competition and its accompanying public interest benefits.

When it decided to apply LNP requirements to wireless carriers, the Commission found the capability to be in the public interest based upon its belief that LNP will facilitate CMRS competition by “eliminating the need for customers to change telephone numbers when switching providers of cellular services, broadband PCS, and covered SMR services.”¹¹

However, as the record highlights and recent experience has demonstrated, LNP is not necessary to the development of wireless competition. Consumers do not highly value number portability in the wireless context. Experience shows that, unlike wireline telephone numbers, consumers generally do not publish their wireless numbers in any way – by directory, on business cards, or even by word of mouth.¹² Rather, surveys reveal that consumers place a higher value on price, service quality and coverage areas when deciding when to switch carriers.¹³ In other words, wireless LNP is not in demand in the market. Thus, by requiring LNP at this time, the Commission will be forcing wireless carriers to offer a service their users have not demanded, without a corresponding competitive benefit.

The proof that LNP is not necessary to enable customer mobility is found in the dynamics of the market without LNP. In its comments to the Commission, PrimeCo reported that “slightly

¹¹ *Telephone Number Portability*, 11 FCC Rcd 8352, 8436 (1996) (*First Report & Order and Further Notice of Proposed Rulemaking*).

¹² See BAM Comments at 13-14; GTE Service Corp. (“GTE”) Comments at 7; SBMS/PBMS Comments at 9.

¹³ AirTouch Communications, Inc. (“AirTouch”) Comments at 4; BAM Comments at 12-13. Century’s customer satisfaction surveys have yielded similar results.

over half of all new customers were previously subscribers of another wireless service provider.”¹⁴ Other commenters noted that the rates at which consumers switch carriers in the CMRS market are very high.¹⁵ One report, compiled by Andersen Consulting, found that wireless customers switch carriers at annual rates of 30% in the U.S. CMRS market.¹⁶ In short, the record illustrates that customers are switching carriers now to get better prices, service and coverage. LNP is not necessary to promote competition.

Indeed, rather than promoting competition, LNP may actually hinder its development by making it more difficult for all types of wireless carriers, especially new-entrants, to respond to consumer demands. It is given that the deployment of LNP in wireless will be expensive.¹⁷ As explained in the record, this is the case because wireless carriers will need “to change their present method of verifying the identity and legitimacy of *every wireless telephone in the country*.”¹⁸ This act will require upgrades or modifications to virtually every aspect of the wireless operation – switches, operation support systems, transmission codes, etc.¹⁹ One carrier, AirTouch, expects that it will incur costs ranging from \$55-75 million in order to comply with

¹⁴ PrimeCo Comments at 10.

¹⁵ GTE Comments at 7; PrimeCo Comments at 10; SBMS/PBMS Comments at 5.

¹⁶ PrimeCo Comments at 9-10, & n.25 (citing Loss of Wireless Customers Reaching Epidemic Proportions, According to Andersen Consulting Study, *News Release*, No. 97-0629 (rel. Aug. 18, 1997), *reprinted at*, <http://www.ac.com/topstories/currnews/ts_97-0818.html>. This same study found that “increased competition, attractive incentives and few barriers to switching carriers” encourage consumers to change providers. *News Release* at ¶ 3.

¹⁷ See, e.g., AirTouch Comments at 2-3; BAM Comments at 3; Sprint Spectrum, L.P. (“Sprint PCS”) Comments at 3.

¹⁸ United States Cellular Corp. (“USCC”) Comments at 3.

the LNP regulations.²⁰ Even smaller carriers will need to expend a large amount of money to comply. For example, Upstate Cellular Networks estimates that it will spend \$ 2-3 million to deploy system-wide platforms.²¹

Thus, given the huge expense that carriers will be required to undertake, the clear majority of the cellular and PCS wireless carriers observed that LNP costs will restrict the ability of wireless carriers to offer lower prices, expand coverage, and upgrade their networks.²² Yet, surveys reveal that it is precisely these things that consumers care about, and it is these things, not the implementation of LNP, that enhance a carrier's ability to compete.²³

The burdens of deploying LNP will hit rural wireless carriers, like Century, especially hard. Unlike wireline customers, wireless users can roam everywhere. Thus, in order to support the porting capability of these roaming customers, *every single wireless carrier* – including those in rural areas – will be required to modify and upgrade its systems to support LNP.²⁴ However, as RTG points out, the market in rural areas develops more slowly²⁵ and the customer base over

(...Continued)

¹⁹ See AirTouch Comments at 2-3; USCC Comments at 3.

²⁰ See AirTouch Comments at 2-3.

²¹ See Upstate Cellular Network Comments at 2.

²² See, e.g., AirTouch Comments at 6; BAM Comments at 16-18; GTE Comments at 4-5; PrimeCo Comments at 12; SBMS/PBMS Comments at 7; Sprint PCS Comments at 3.

²³ GTE Comments at 5; see also PrimeCo Comments at 10 (“[I]t is critical that new entrants like PrimeCo be able to focus limited financial, engineering and marketing resources on network deployment to improve service coverage and quality.”).

²⁴ See SBMS/PBMS Comments at 8; Rural Telecommunications Group (“RTG”) Comments at 2-3; USCC Comments at 3.

²⁵ RTG Comments at 3.

which a rural carrier can distribute its fixed costs is smaller. These characteristics mean that it is more difficult and expensive for rural carriers to upgrade and expand their service offerings to their customers. Even so, these carriers attempt to bring the latest technology to their customers. For example, Century is starting to bring the benefits of digital technology and is working toward deployment of PCS systems to its rural markets. As a carrier with rural markets, Century agrees with RTG's conclusion that "requiring them [rural carriers] to divert those same resources to the implementation of number portability would delay, and possibly halt, the progress these entities are making in the delivery of new [and upgraded] services to rural areas."²⁶

Forbearance in this instance will also provide another benefit to the public – flexibility. Century agrees with PCIA's conclusion that forbearance will create a "flexible, economic and technology driven deadline for the implementation" of LNP.²⁷ As different commenters observed, the technology needed to deploy LNP in the wireless market presents a difficult challenge because virtually the entire system must be modified or upgraded. At this time, "number portability as contemplated by the Commission is not technically feasible"²⁸ and the current implementation deadline is all but unattainable.²⁹ Absent forbearance, the Commission would essentially be requiring carriers to devote their finite resources to the premature deployment of an immature technology. However, by granting forbearance, the Commission

²⁶ *Id.*

²⁷ Personal Communications Industry Assoc. ("PCIA") Comments at 1-2.

²⁸ RTG Comments at 2.

²⁹ See PCIA Comments at 4 (observing that the equipment needed "to provide a stable platform for the databases needed to support local number portability" is not currently available). See also Petition for Extension of Implementation Deadlines of CTIA (filed Nov. 24, 1997).

would be affording wireless carriers the flexibility “to determine the timing and priority focus of their limited and financial operational resources.”³⁰

II. CONCLUSION

As detailed above, CTIA’s Petition for Forbearance clearly satisfies the statutory requirements. The Commission already has determined that competition in the CMRS market protects consumers and guarantees just and reasonable rates. Further, the record reveals a broad consensus among all types of wireless carriers that applying LNP in the wireless context is not necessary to promote the state of competition in the CMRS market – customers have certainly not been inhibited from switching carriers in its absence. Finally, forbearance of wireless LNP clearly serves the public interest. Permitting LNP requirements to be imposed at this time will negatively impact the ability of carriers, notably rural carriers, to respond to customers’ key concerns – lower prices, better service, more extensive coverage. Forbearance also has the

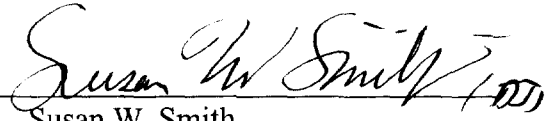
³⁰ PCIA Comments at 4.

benefit of postponing the deployment of an immature, and as yet infeasible, technology until it is more fully developed and demanded by the market. Based on the foregoing, Century urges the Commission to grant CTIA's Petition for Forbearance.

Respectfully submitted,

CENTURY CELLUNET, INC.

By: _____



Susan W. Smith
Director – External Affairs
Century Cellunet, Inc.
3505 Summerhill Road
No. 4 Summer Place
Texarkana, TX 75501

March 10, 1998

CERTIFICATE OF SERVICE

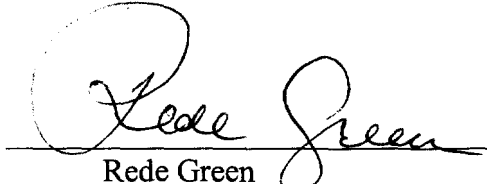
I, Rede Green, do hereby certify that on this 10th day of March, 1998, a copy of the foregoing "Reply Comments of Century Cellunet, Inc." was served via messenger or U.S. First Class Mail, postage prepaid, to the parties listed below:

Via Hand Delivery:

Janice Jamison, (two copies)
Wireless Telecommunications Bureau
Federal Communications Commission
Suite 700
2100 M Street, N.W.
Washington, DC 20554

Via First Class Mail:

Michael F. Altschul, Esq.
Vice President & General Counsel
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036


Rede Green